



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0734; FRL-9753-4]

Withdrawal of Approval of Air Quality Implementation Plans and Findings of Failure to Submit
Required Plans; California; San Joaquin Valley; 1-Hour and 8-Hour Ozone Extreme Area Plan
Elements

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is withdrawing its March 8, 2010 final action approving State Implementation Plan (SIP) revisions submitted by California to provide for attainment of the 1-hour ozone National Ambient Air Quality Standards (NAAQS) in the San Joaquin Valley extreme ozone nonattainment area. In addition, EPA is withdrawing its March 1, 2012 determination that the California SIP satisfies the requirement regarding offsetting emissions growth caused by growth in vehicle miles traveled (VMT) under the Clean Air Act (CAA) for the 1997 8-hour ozone NAAQS in the San Joaquin Valley. Finally, EPA is finding that California has failed to submit required SIP revisions to provide for attainment of the 1-hour ozone NAAQS and to address the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS in the San Joaquin Valley. Under the CAA, these findings of failure to submit trigger the 18-month time clock for mandatory imposition of sanctions and the two-year time clock for EPA to promulgate federal implementation plans.

DATES: The rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2012-0734 for this action.

The index to the docket is available electronically at www.regulations.gov and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some may be publicly available only at the hard copy location (e.g., copyrighted material) and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR-2), (415) 972-3957, wicher.frances@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we”, “us” and “our” refer to EPA.

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I. San Joaquin Valley 2004 1-Hour Ozone Plan

A. Withdrawal of EPA's Approval of the 2004 1-Hour Ozone Plan

EPA is withdrawing its March 8, 2010 final action approving SIP revisions submitted by California under the CAA to provide for attainment of the 1-hour ozone national ambient air quality standards (NAAQS) in the San Joaquin Valley (SJV) extreme ozone nonattainment area (2004 1-Hour Ozone Plan) (75 FR 10420). The effect of this action is to entirely withdraw the 2004 1-Hour Ozone Plan from the applicable California SIP. We proposed this action on September 19, 2012 (77 FR 58078) and provided a 30-day period for the public to submit comments. We received no comments.

EPA is taking this action in response to a decision of the U.S. Court of Appeals for the Ninth Circuit in *Sierra Club et. al v. EPA*, 671 F.3d 955 (9th Cir. 2012) (*Sierra Club*). For further background on this court decision and EPA's rationale for today's action, please see our proposed rule at 77 FR 58078.

B. Finding of Failure to Submit a SIP to Provide for Attainment of the 1-Hour Ozone Standards in the SJV Extreme 1-Hour Ozone Nonattainment Area

Following our proposed rule to withdraw our March 8, 2010 approval of the 2004 1-Hour Ozone Plan into the SIP, California submitted a letter stating its intention to withdraw its submission of this plan to EPA, effective immediately upon EPA's final withdrawal of the March 8, 2010 approval. See letter dated October 15, 2012, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, EPA Region 9. As a consequence of EPA's final withdrawal of our approval of the 2004 1-Hour Ozone Plan and California's simultaneous withdrawal of the 2004 1-Hour Ozone Plan from EPA, the State is now in default of its obligation to submit a SIP to provide for attainment of the

1-hour ozone NAAQS in the SJV extreme ozone nonattainment area.¹ Therefore, simultaneously with this withdrawal of approval, EPA is finding that California has failed to submit an extreme area plan to provide for attainment of the 1-hour ozone NAAQS in the SJV nonattainment area.

As explained in our proposed rule (77 FR at 58079-80), the plan elements under subparts 1 and 2 of part D, title I of the CAA that California is required to submit for the 1-hour ozone NAAQS for the SJV are as follows: (1) a rate of progress (ROP) demonstration meeting the requirements of CAA sections 172(c)(2) and 182(c)(2); (2) ROP contingency measures meeting the requirements of CAA sections 172(c)(9) and 182(c)(9); (3) an attainment demonstration meeting the requirements of CAA sections 182(c)(2)(A) and 172(a)(2); (4) attainment contingency measures meeting the requirements of CAA sections 172(c)(9); (5) a reasonably available control measures (RACM) demonstration meeting the requirements of CAA section 172(c)(1); (6) provisions satisfying the requirements for clean fuels/clean technologies for boilers in CAA 182(e)(3); and (7) provisions satisfying the vehicle miles traveled (VMT) provisions of CAA section 182(d)(1)(A). See 40 CFR 51.905(a)(1) and 51.900(f); see also 75 FR 10420, 10436-37.

This finding of failure to submit is not subject to the notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided by the CAA to make findings of failure to submit, Congress did not intend

¹ California was obligated to submit SIP revisions to address the requirement in CAA section 182(d)(1)(A) regarding offsetting emissions growth caused by growth in VMT for the 1-hour ozone standard in SJV no later than May 31, 2002, and additional SIP revisions meeting the CAA's extreme area requirements for the 1-hour ozone standard in SJV no later than November 15, 2004. See 66 FR 56476, 56481 (November 8, 2001) (final rule finding that SJV failed to attain 1-hour ozone NAAQS by applicable attainment date and reclassifying SJV from "serious" to "severe" nonattainment, effective December 10, 2001) and 69 FR 20550 (April 16, 2004) (final rule reclassifying SJV from "severe" to "extreme" nonattainment for 1-hour ozone NAAQS, effective May 17, 2004).

such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception pursuant to APA section 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, notice and comment would be contrary to the public interest because it would divert EPA resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, note 7 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

II. VMT Emissions Offset Requirement for 1997 8-Hour Ozone Standards

A. Withdrawal of EPA's Determination that the 2007 8-Hour Ozone Plan Satisfies the VMT Emissions Offset Requirement in CAA Section 182(d)(1)(A)

EPA is withdrawing its March 1, 2012 determination that California's SIP to provide for attainment of the 1997 8-hour ozone NAAQS² in the SJV extreme ozone nonattainment area (2007 8-Hour Ozone Plan) satisfies the requirement regarding emissions growth caused by growth in vehicle miles traveled in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS. Section 182(d)(1)(A) of the Act requires, in relevant part, that each state containing a "severe" or "extreme" ozone nonattainment area submit a SIP revision that identifies and adopts specific enforceable transportation control strategies and measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in the area (VMT emissions offset requirement).³ We proposed this action on September 19, 2012 (77 FR 58078) and provided a 30-day period for the public to submit comments. We received no comments.

² All references in this preamble to the 8-hour NAAQS are to the 0.08 parts per million standards established in 1997 at 40 CFR 50.10(b).

³ CAA section 182(d)(1)(A) also requires states to adopt transportation control strategies and measures as necessary to demonstrate attainment and reasonable further progress. These requirements of section 182(d)(1)(A) are not at issue in this action.

EPA is taking this action in response to a decision of the U.S. Court of Appeals for the Ninth Circuit in *Association of Irrigated Residents v. EPA*, 632 F.3d 584 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (*AIR*). For further background on this court decision and EPA's rationale for today's action, please see our proposed rule at 77 FR 58078.

This withdrawal of approval is limited to our determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS. All other determinations in our March 1, 2012 final rule approving the 2007 8-Hour Ozone Plan at 77 FR 12652 remain unchanged and in effect.

B. Finding of Failure to Submit a SIP Meeting the CAA Section 182(d)(1)(A) VMT Emissions Offset Requirement for the SJV 8-Hour Ozone Nonattainment Area

EPA's determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS was made in the absence of any specific demonstration submitted by the State for this purpose and was based on EPA's evaluation of emissions inventory data submitted as part of the 2007 8-Hour Ozone Plan. See 76 FR 57846, 57863 (September 16, 2011) and 77 FR 12652, 12666 and 12670 (March 1, 2012). Thus, as a consequence of our withdrawal of our determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A), California is now in default of its obligation to submit a SIP revision meeting this CAA requirement for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area.⁴ Therefore, simultaneously with

⁴ Consistent with CAA section 182(d)(1)(A) and EPA's implementation regulations for the 1997 8-hour ozone NAAQS at 40 CFR part 51, subpart X, we interpret the 2-year timeframe for submission of the VMT emissions offset SIP for the 1997 8-hour ozone NAAQS to run from the effective date of EPA's reclassification of SJV from "serious" to "extreme" nonattainment for this standard. Accordingly, California was obligated to submit a VMT emissions offset SIP for

this withdrawal of approval, EPA is finding that California has failed to submit a required SIP revision to meet the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area.

This finding of failure to submit is not subject to the notice-and-comment requirements of the APA. EPA believes that because of the limited time provided by the CAA to make findings of failure to submit, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception pursuant to APA section 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, notice and comment would be contrary to the public interest because it would divert EPA resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, note 7 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Final Actions

A. Withdrawals of Approvals

EPA is withdrawing its March 8, 2010 final action approving the 2004 1-Hour Ozone Plan, which California submitted to provide for attainment of the 1-hour ozone NAAQS in the SJV extreme ozone nonattainment area (75 FR 10420, March 8, 2010).

In addition, EPA is withdrawing its March 1, 2012 determination that the 2007 8-Hour Ozone Plan, which California submitted to provide for attainment of the 1997 8-hour ozone NAAQS in the SJV, satisfies the VMT emissions offset requirement in CAA section

the 1997 8-hour ozone NAAQS for the SJV area no later than June 4, 2012. *See* 75 FR 24409 (May 5, 2010) (final rule reclassifying SJV from “serious” to “extreme” nonattainment for 1997 8-hour ozone NAAQS, effective June 4, 2010).

182(d)(1)(A) for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area (77 FR 12652 at 12670, March 1, 2012).

B. Findings of Failure to Submit Required SIP Revisions

As a consequence of EPA's final withdrawal of our previous approval of the 2004 1-Hour Ozone Plan and California's simultaneous withdrawal of its submission of the 2004 1-Hour Ozone Plan, EPA is finding that California has failed to submit a required SIP revision to provide for attainment of the 1-hour ozone NAAQS in the SJV extreme ozone nonattainment area.

In addition, as a consequence of EPA's withdrawal of our determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS, EPA is finding that California has failed to submit a required SIP revision that identifies and adopts transportation control strategies and measures to offset any growth in emissions from growth in VMT or the numbers of vehicle trips as required by CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS in the SJV extreme ozone nonattainment area.

Under CAA section 179(a), a finding of failure to submit a plan or plan element required by part D of title I of the Act triggers sanction clocks under CAA section 179(b). These clocks run from the effective date of EPA's finding. The first sanction, the offset sanction in CAA section 179(b)(2), will apply in the SJV extreme ozone nonattainment area 18 months from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The second sanction, highway funding sanctions in CAA section 179(b)(1), will apply in the area six months after the offset sanction is imposed, in accordance with 40 CFR 52.31. The State can end these sanction clocks or lift any imposed sanctions by making complete SIP submittals addressing the

CAA's extreme area requirements for the 1-hour ozone NAAQS and the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS in the SJV area.

In addition to these sanctions, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan addressing the CAA's extreme area requirements for the 1-hour ozone NAAQS and the VMT emissions offset requirement for the 1997 8-hour ozone NAAQS in the SJV area, no later than two years after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the State submits and EPA approves SIP revisions addressing these requirements before that date.

C. Effective Date under the Administrative Procedure Act

These actions will be effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under APA section 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the Federal Register if an agency has good cause to specify an earlier effective date. Today's actions to withdraw EPA's previous approval of the 2004 1-Hour Ozone Plan and to withdraw EPA's previous determination that the 2007 8-Hour Ozone Plan satisfies the VMT emissions offset requirement in CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS are being taken in response to the Ninth Circuit's decisions in the *Sierra Club* and *AIR* decisions, as discussed above and in our proposed rule. The purpose of a delayed effective date is to ensure that regulated entities have advance notice of obligations with which they must comply. Because today's withdrawal actions do not place a burden on any entity, a delayed compliance date is unnecessary. Moreover, because the court has ruled that these prior determinations were inconsistent with the CAA, it is in the public interest for the effective date of our actions withdrawing these approvals to become effective immediately.

These reasons support an effective date prior to 30 days after the date of publication of these withdrawals of approval.

In addition, EPA's finding that California has failed to submit an extreme area plan to provide for attainment of the 1-hour ozone NAAQS in the SJV is a necessary consequence of EPA's withdrawal of approval of the 2004 1-Hour Ozone Plan and California's simultaneous withdrawal of this plan from EPA. Similarly, EPA's finding that California has failed to submit a VMT emissions offset SIP under CAA section 182(d)(1)(A) for the 1997 8-hour ozone NAAQS for the SJV is a necessary consequence of EPA's withdrawal of its determination that the 2007 8-Hour Ozone Plan satisfies this requirement. These findings of failure to submit concern required CAA submittals that are overdue. We previously cautioned California and the public that we would make such findings and that these findings would be effective upon publication in the Federal Register. See 77 FR 58078 at 58079, 58080. Finally, these findings of failure to submit simply start clocks that will not result in sanctions against the State for 18 months and that the State may turn off by making complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication of these findings.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to review under it.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This action to withdraw previous EPA approvals and determinations and to make findings of failure to submit under the CAA will not have a significant impact on a substantial number of small entities because this action does not create any new requirements. This action relates to the existing requirements in the CAA that states submit SIPs to provide for attainment and to meet other applicable CAA requirements in each of their 1-hour ozone nonattainment areas and to submit transportation control strategies and measures to offset emissions growth from growth in VMT or the numbers of vehicle trips in each of their severe and extreme 8-hour ozone nonattainment areas. Therefore, because this action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with

statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action to withdraw previous EPA approvals and determinations and to make findings of failure to submit under the CAA does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action relates to the existing requirements in the CAA that states submit SIPs to provide for attainment and to meet other applicable CAA requirements in each of their 1-hour ozone nonattainment areas and to submit transportation control strategies and measures to offset emissions growth from growth in VMT or the numbers of vehicle trips in each of their severe and extreme 8-hour ozone nonattainment areas. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing SIPs including SIPs to attain the NAAQS and to meet other applicable CAA requirements including the VMT emissions offset requirement in CAA section 182(d)(1)(A)). This action will not modify this relationship. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination with Indian Tribal Governments

This final action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this final action.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is withdrawing previous EPA approvals and determinations and making findings that California has failed to submitted a SIP that meets the requirements of CAA the SJV extreme ozone nonattainment area. The findings of failure to submit establish a 24-month deadline for EPA to promulgate a FIP to address the outstanding SIP requirements unless, prior to that time, California submits, and EPA approves, the required SIPs.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new

regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is withdrawing previous EPA approvals and determinations and making findings that California has failed to submit SIPs that meet certain requirements of CAA for the SJV extreme ozone nonattainment area.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2). This rule is effective on **[[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

L. Petitions for Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Dioxide, Ozone, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: November 9, 2012

Jared Blumenfeld,
EPA Regional Administrator, Region 9

For the reasons discussed in the preamble, EPA amends 40 CFR part 52 to read as follows:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by:

- a. Removing and reserving paragraphs (c)(317)(i)(B) and (c)(339)(i)(B);
- b. Removing paragraph (c)(339)(ii)(C); and
- c. Removing and reserving paragraphs (c)(369) and (c)(370) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(317) * * *

(i) * * *

(B) [Reserved]

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(339) * * *

(i) * * *

(B) [Reserved]

* * * * *

(369) [Reserved]

(370) [Reserved]

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[FR Doc. 2012-28217 Filed 11/23/2012 at 8:45 am; Publication Date: 11/26/2012]